

UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF SOUTH DAKOTA  
SOUTHERN DIVISION

BELL INCORPORATED,

Plaintiff,

v.

DRENT GOEBEL USA, INC., DRENT GOEBEL  
B.V., and DRENT GOEBEL GmbH,

Defendants.

No.: 4:08-cv-04192-LLP

**DEFENDANT DRENT GOEBEL USA,  
INC.’S MOTION TO DISMISS BELL  
INCORPORATED’S COMPLAINT, OR  
IN THE ALTERNATIVE, TO  
TRANSFER**

Defendant Drent Goebel USA, Inc. f/k/a Drent Goebel America, Inc. (“Drent Goebel USA”) respectfully moves this Court to dismiss Bell Incorporated’s Complaint pursuant to Fed. R. Civ. P. 12(b)(3) or 12(b)(6) for improper venue, or in the alternative, to transfer pursuant to 28 U.S.C. § 1404(a). In support thereof, Drent Goebel USA states as follows:

1. Plaintiff Bell Incorporated (“Bell”), a South Dakota corporation, and Defendant Drent Goebel USA, an Illinois corporation, entered into a Sales Contract in September 2004 regarding the sale of a customized web offset printing press, as described in the Sales Contract and supporting Annexes. A copy of the Sales Contract is attached as Exhibit A to the Plaintiff’s Complaint (Dkt. 1).

2. The Sales Contract, which was the product of arms-length negotiations between two sophisticated business entities, both of which were represented by counsel in the negotiation of the Sales Contract, contains a mandatory forum selection clause which provides that “the parties hereby submit to the jurisdiction of any court (state or federal) in the state of Illinois and

agree that venue is proper and exclusive therein for the purpose of any lawsuit arising out of or relating to the construction or enforcement of this Contract.” (Dkt. 1, Ex. A at Article 15-2)(emphasis added).)

3. Plaintiff Bell Incorporated (“Bell”) filed the instant complaint on December 1, 2008 against Drent Goebel USA, and related foreign entities Drent Goebel B.V. and Drent Goebel GmbH, alleging breach of contract and breach of express limited warranty (against Drent Goebel USA only), and fraudulent inducement, breach of the Illinois and South Dakota consumer protection acts, and breach of implied warranty, against all three defendants. (Dkt. 1.)

4. Drent Goebel USA was served in the instant matter on December 8, 2008. Counsel for Drent Goebel USA timely entered an appearance in this action and filed this responsive pleading on December 29, 2008. Upon information and belief, foreign entities Drent Goebel B.V. and Drent Goebel GmbH have not been served and have not entered appearances in this action.

5. For the reasons set forth in the accompanying Memorandum of Law in Support of Defendant Drent Goebel USA, Inc.’s Motion to Dismiss Bell Incorporated’s Complaint, or in the Alternative, To Transfer, Bell’s Complaint should be dismissed pursuant to Fed. R. Civ. P. 12(b)(3) or 12(b)(6) for improper venue on the basis that Bell’s Complaint triggers the enforceable and mandatory forum selection clause.

6. In the alternative, and for the reasons set forth in the accompanying Memorandum of Law in Support of Defendant Drent Goebel USA, Inc.’s Motion to Dismiss Bell Incorporated’s Complaint, or in the Alternative, To Transfer, Bell’s Complaint should be transferred pursuant to 28 U.S.C. § 1404(a) and the enforceable forum selection clause to the U.S. District Court for the Northern District of Illinois, Eastern Division, the district which

encompasses Drent Goebel USA's principal place of business in Volo, Illinois.

DATED this 29th day of December, 2008.

Respectfully submitted,

/s/ Jon C. Sogn

Jon C. Sogn  
Lynn, Jackson, Shultz & Lebrun, P.C.  
US Bank Building, Suite 900  
141 North Main Avenue  
P.O. Box 2700  
Sioux Falls, SD 57101-2700  
(605) 332-5999  
jsogn@lynnjackson.com

-and-

Robert P. Conlon  
Marnie N. Bozic  
Walker Wilcox Matousek LLP  
225 West Washington Street, Suite 2400  
Chicago, IL 60606  
(312) 244-6700

*(Pro Hac Vice Motions Pending)*

Attorneys for Defendant

#### **CERTIFICATE OF SERVICE**

I hereby certify that on December 29, 2008, I electronically filed the foregoing **Defendant Drent Goebel USA, Inc.'s Motion to Dismiss Bell Incorporated's Complaint, or in the Alternative, to Transfer** with the Clerk of the Court using CM/EDF system which upon information and belief will send notification of such filing to James E. Moore at James.Moore@woodsfuller.com.

/s/ Jon C. Sogn  
Jon C. Sogn